

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition for Rulemaking
of Pacific Bell Mobile Services
Regarding a Plan for Sharing
the Costs of Microwave Relocation

RM-8643

**REPLY COMMENTS OF
McCAW CELLULAR COMMUNICATIONS, INC.**

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, submits this reply to the comments submitted in response to the above-captioned Petition for Rulemaking. McCaw is the country's largest provider of cellular service; its affiliate AT&T Wireless PCS Inc.^{1/} was recently awarded 30 MHz broadband Personal Communications Services ("PCS") licenses for 21 MTAs and will shortly begin providing service.

McCaw generally supports the mandatory cost-sharing concept embodied in Pacific Bell's proposal but recommends that the Commission revise the plan to incorporate several changes proposed by the Personal Communications Industry Association ("PCIA"). McCaw agrees that the creation of "interference rights" associated with relocating incumbent

^{1/} On September 19, 1994, McCaw was acquired by AT&T Corp.

microwave licensees will address the "free rider" problem that concerns the Commission,^{2/} mitigating the substantial costs of microwave relocation.^{3/} Such a plan would also provide incentives for the development of PCS, reducing transaction costs and allowing PCS providers to deploy their services sooner and more efficiently.^{4/}

As the commenters note, however, cost sharing is impractical without a meaningful cap on the total amount that can be apportioned to subsequent licensees.^{5/} Pacific Bell included in its proposal a "cap" of \$600,000 per site on the amount a relocating licensee could allocate between itself and subsequent licensees who would have interfered with the incumbent.^{6/} Based on its review of the matter, McCaw supports PCIA's suggested cap of \$250,000^{7/} because it is a more accurate reflection of the actual costs of relocating a microwave incumbent. Indeed, the \$600,000 cap proposed by Pacific Bell far exceeds

^{2/} In the Matter of Amendment of the Commission's Rules to Establish New Personal Communication Services, 9 FCC Rcd 6908, 6915 ¶ 40 (1994).

^{3/} Estimates of the cost range upwards of one billion dollars. See Personal Communications Industry Association Petition for Partial Reconsideration of Memorandum Opinion and Order, GEN Docket No. 90-314, filed July 25, 1994, at 2. See also Pacific Bell Petition at 2.

^{4/} See Comments of the Personal Communications Industry Association, filed June 15, 1995, at 5-6 ("PCIA Comments").

^{5/} See, e.g., Comments of BellSouth Corporation, filed June 15, 1995, at 2 ("BellSouth Comments"); PCIA Comments at 13.

^{6/} Pacific Bell Petition at 10-11. Although the text is somewhat ambiguous, the cost sharing formula itself imposes no cap on the amount that can be paid by the relocater to the relocating incumbent. Rather, it caps the total amount that may be recouped from subsequent interfering parties. See id. at 8.

^{7/} PCIA Comments at 13, 15 (with an additional \$150,000 if construction of a new tower is necessary).

McCaw's own estimates of typical relocation costs and could expose PCS providers who enter the market later to excessive relocation liability.

The cap is essential to protect the public interest in the development of PCS services. Capping the total amount that may be allocated among the PCS licensees ensures that the economic burden to be apportioned among PCS licensees represents only the allowable costs of relocation and that later entrants into the PCS market are not burdened by what they might construe as "premium" costs associated with the first market entry.^{8/} By limiting the economic burden that may be shifted to subsequent licensees, the cap imposes realistic limits on the bargaining between the incumbent and the first new licensee.

A number of commenters misperceive the manner in which the proposed cap would work.^{9/} The cap would not limit the bargain that could be struck between the incumbent and the initial relocater. The relocater could still pay a premium that reflects the benefits of early deployment of its PCS services. The cap would merely ensure that subsequent

^{8/} Direct negotiations between the incumbent (the "relocating" party) and the first PCS licensee (the "relocator") minimize the transaction costs associated with relocating a microwave incumbent. However, subsequent licensees should not be forced to bear the weight of any costs that derive solely from the bargaining process itself; they should be responsible only for an appropriate share of the costs of relocating the incumbent. See In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of Telecommunications Technologies, 7 FCC Rcd 6886, 6890 ¶ 24 (1992) ("First Report and Order") (e.g., engineering, equipment, and site fees). Cf. BellSouth Comments at 2 (noting that "[a] licensee with no immediate need to relocate a given microwave path should not have to pay any portion of the premium that another licensee unilaterally agreed to pay for accelerated relocation.").

^{9/} See, e.g., Comments of The American Petroleum Institute, filed June 15, 1995, at 7 (calling the cap a "limit on the price of a link"); Comments of the City of San Diego, filed June 15, 1995, at 7 (noting that the cap is "an artificial ceiling" on negotiations).

licensees would not have to reimburse the initial relocater for costs not directly associated with actual relocation of the incumbent.

In addition to establishing a cap on the amount of relocation costs that can be passed on to subsequent licensees, the Commission should use this rulemaking to address a number of other problems with the relocation process. For example, the Commission requires relocation of incumbents to "comparable" facilities, but does not define this term.^{10/} Without a realistic definition, incumbents may be tempted to use the relocation process as an opportunity to demand gold-plated upgrades to their facilities unrelated to the relocater's obligation to provide "comparable" facilities.^{11/} PCS licensees should only be required to pay for what is necessary to permit incumbents to maintain their existing services at the current level of service quality. To avoid abuse of this process by incumbents seeking to extract unreasonable and excessive concessions for relocation, "comparable facilities" should be defined as facilities that permit continued service at interference levels no greater than users experienced on the incumbent's original facilities.^{12/} Without a clear limitation on the

^{10/} See In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, 8 FCC Rcd 6589, 6603 ¶ 36 (1993) ("Third Report and Order"). See also First Report and Order at 6890 ¶ 25.

^{11/} For instance, during the current voluntary relocation process, incumbent licensees have requested that McCaw replace -- and upgrade -- not only the affected link, but all other links in the system as well. Incumbent microwave licensees should not be allowed to use the relocation process as an "opportunity to hold up all PCS providers." BellSouth Comments at 6.

^{12/} Cf. Comments of Southwestern Bell, filed June 15, 1995, at 4-5 (advocating the use of "least restrictive alternative" relocation plans) ("Southwestern Bell Comments"); id. at 7 (asking for the establishment of performance standards for incumbent licensees in order to facilitate relocation).

responsibilities of PCS licensees, incumbents may attempt to extract from relocators unjustified premiums that are unrelated to achieving the goal of comparability.

CONCLUSION

McCaw urges the Commission to initiate a rulemaking that proposes a relocation process that ensures rapid and fair deployment of PCS. A cost sharing mechanism based on the principles set forth by Pacific Bell and PCIA is in the public interest and will benefit all participants. The Commission should also eliminate the potential for delay inherent in its current relocation policies.

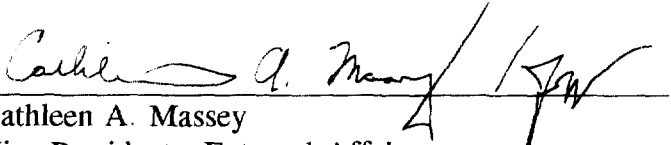
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